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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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In re R.P. et al., Persons Coming Under  
the Juvenile Court Law.

SAN JOAQUIN COUNTY HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

ANA P.,

Defendant and Appellant.

C045961

(Super. Ct. No.  
J02718)

Ana P. (appellant), the mother of L.P., M.P., R.P., E.M., and R.M. (the minors), appeals from orders of the juvenile court terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395; further section references are to this code unless otherwise specified.) She contends that she was denied due process because the court sustained the petition and adjudicated the minors to be dependents in her absence, without any advisement of her rights

or waiver of her right to a contested hearing. For reasons that follow, we shall affirm the orders.

#### FACTS

In April 2002, the Human Services Agency (HSA) placed the five minors, ages 5, 10, 11, 12, and 13, in protective custody based upon allegations that the minors were sexually abused by an older half sibling while living with the maternal grandmother and that appellant, who had an extensive criminal record, was in custody in Arizona. Further investigation established that appellant had been in custody in Arizona since June 2001, awaiting deportation due to arrests on drug charges.

The juvenile court detained the minors and scheduled a jurisdictional hearing. Despite orders to produce and multiple continuances over six months, during which time counsel was appointed for her, appellant was never brought to California. Finally, in October 2002, the court proceeded with the jurisdictional hearing in appellant's absence. Her counsel had been in contact with appellant's immigration attorney and voiced no objection to moving on to the dispositional hearing, providing that all issues could be addressed if appellant were transported from Arizona.

According to the dispositional report, in telephone contact with the social worker, appellant expressed her love for the minors and her concerns about them being in foster care. She maintained contact with the minors by letters and cards. The report recommended the denial of services because there was no way to access them in federal deportation detention.

In March 2003, appellant's counsel represented that there was an agreement to submit on the issues with the understanding that, if appellant were released, the disposition could be reassessed. The court adopted the recommended findings and orders.

Review reports in May 2003, stated that appellant continued to be held in federal detention, had appealed the deportation decision, and was waiting for the federal court to hear her appeal. The two boys, R.M. and E.M, did not want to be adopted, although the three girls, R.P., M.P. and L.P., wanted adoption and an adoptive placement was being sought for them. The juvenile court approved a plan of long-term foster care for the two boys and set a section 366.26 hearing for the girls.

The section 366.26 assessment for the girls in July 2003, recommended the termination of parental rights and stated that a prospective adoptive parent had been located for them. Appellant remained in federal detention and had been writing to the minors, but the letters were intercepted due to inappropriate content.

The hearing was continued several times to December 2003, with appellant making appearances by telephone. At one such appearance, HSA informed the parties that a person with whom appellant wanted the minors to be placed could not be approved and that the minors did not want to live with that person in any event.

Appellant testified at the section 366.26 hearing by telephone that she did not know when she would be released from detention, that she was closely bonded to the minors, and that she wanted them to be placed with a friend of hers. She insisted that she had maintained weekly contact with the minors but admitted that her

last telephone call to them was in March 2002. The social worker confirmed that there had been no telephone contact between appellant and the minors for over a year.

Finding no detriment to the minors, the court terminated parental rights.

#### DISCUSSION

Appellant contends she was denied due process because the juvenile court proceeded with both jurisdictional and dispositional hearings in her absence.

Appellant has forfeited the right to raise the issues because she failed to assert them in a timely fashion in the juvenile court. (*In re Daniel K.* (1998) 61 Cal.App.4th 661, 667; *John F. v. Superior Court* (1996) 43 Cal.App.4th 400, 404-405; *In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2.)

Appellant argues her claims may not be deemed forfeited because doing so would violate due process of law. She further contends that, had she been given the opportunity to contest the allegations, she might have provided names of alternate caretakers or evidence of her "deportation proceedings, such that reunification may have been possible within [the] statutory time limitations."

Due process of law applies to juvenile dependency proceedings and requires both notice and the opportunity to be heard in such proceedings that are characterized by fundamental fairness. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 306-307; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 412-413; *In re Amy M.* (1991) 232 Cal.App.3d 849, 864.) In order to afford parents incarcerated in this state

access to the juvenile court, the Legislature enacted Penal Code section 2625, requiring the court to send notice to, and order the presence of, prisoners incarcerated in California who have expressed a desire to attend proceedings to adjudicate a child a dependent or to terminate parental rights. (Pen. Code, § 2625, subds. (b), (c); *In re Maria S.* (1997) 60 Cal.App.4th 1309, 1312-1313.)

There is a separate constitutional due process of law right of prisoners to have access to the courts and a meaningful opportunity to be heard. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 601.) How this right is satisfied in a particular set of circumstances is dependent upon the nature of the case and the discretion of the court. (*Ibid.*) Because the California Superior Court lacks power to order the presence of a prisoner in federal custody, "no denial of due process has been found where the prisoner-parent is unable to attend because he or she is in the custody of another state or the federal government and is represented by counsel." (*Id.* at p. 626; *In re Maria S.*, *supra*, 60 Cal.App.4th at pp. 1313-1314.)

Appellant relies on *In re Stacy T.* (1997) 52 Cal.App.4th 1415 (hereafter *Stacy T.*) as authority for a due process violation in proceeding in the absence of a parent. *Stacy T.* is distinguishable in several respects. It dealt with a denial of due process in applying local rules which permitted a default when a parent, who had previously appeared, failed to appear for the jurisdictional hearing. (*Id.* at pp. 1422, 1424.) It did not address the question of parents incarcerated in federal or out-of-state custody. Thus, the reasoning and result of *Stacy T.* are not controlling here.

In any event, as we will explain, appellant's claim of prejudicial error fails.

Appellant was represented by counsel who tried unsuccessfully to have her transported so she could be personally present at the jurisdictional hearing. When the juvenile court ultimately decided to proceed on the petitions, appellant's counsel had no objection. The relevant allegations of the petition relating to appellant--she was currently in custody and was unavailable to provide for the minors' care--were not refutable. Because she was in custody during the period in which the minors were abused, she was unable to present any admissible testimony regarding those allegations. Hence, she could not have been prejudiced by not being personally present or by any failure of the court to advise her of her rights.

As to disposition, the federal appellate process controlled her federal custody status, and neither appellant nor appellant's immigration counsel could predict whether she would be released or deported, or when either would occur. Nonetheless, her counsel in the dependency proceedings protected appellant's interest in reunification with the minors by submitting on the disposition recommendations, conditioned upon a reassessment if appellant is released. The record also shows that, despite language barriers and her custody status, appellant was able to advise the social worker of possible alternate caretakers for the minors.

Appellant's claims of prejudice are, at best, speculative. The failure to secure her presence or to hold contested hearings with testimony from witnesses was harmless beyond a reasonable

doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24 [17 L.Ed.2d 705, 710-711].)

DISPOSITION

The orders of the juvenile court are affirmed.

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SCOTLAND, P.J.

We concur:

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BLEASE, J.

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DAVIS, J.